S.B. CIVIL WRIT PETITION NO.6615/2003

Bhanwar Singh & Ors.

VS.

Board of Revenue & Ors.

DATE OF ORDER : 27.1.2005

HON'BLE MR.PRAKASH TATIA, J.

Mr.C.R.Jakhar, for the petitioner.
Mr.B.R.Mehta, for the respondent.

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Heard learned counsel for the parties.

Brief facts of the case are that respondents submitted an application before the Sarpanch of the Gram Panchayat Danwra, Panchayat Samiti Osian claiming their right of way and prayed that the petitioners have obstructed the way, therefore, the way may be opened. On this application, the Gram Panchayat constituted a committee of three persons to inquire into the matter vide Annex.2 dated 4th Sept., 2001 and drawn a resolution no.5. The Gram Panchayat directed to inspect the site and record the statement of the parties concerned and, thereafter, submit the report. The committee submitted its report on 26th Sept., 2001 to the Gram Panchayat stating therein that site was inspected on 26th Sept., 2001 and the statement of both the parties were recorded. The copy of the report of the

committee is Annex.3. Acting upon the said report of the Committee, the Gram Panchayat adopted a resolution no.4 on 4th Oct., 2001 and ordered for removal of the obstruction created by the petitioners on the way.

Being aggrieved against the said decision of the Gram Panchayat, the petitioners preferred appeal under Section 225 of the Rajasthan Tenancy Act. The appeal of the petitioners was dismissed by the Addl. Collector and Addl. District Magistrate No.2, Jodhpur vide order dated 12th Dec., 2001.

The petitioners aggrieved against the above order of the Addl. Collector, preferred revision petition before the learned Board of Revenue, that too, was dismissed on 27th July, 2003.

According to learned counsel for the petitioner no opportunity of hearing was given to the petitioners by the committee, which was appointed by the Gram Panchayat to inquire into the matter, no statement of petitioners were recorded by the committee. The committee merely recorded the statement of the complainant party and submitted the report, which is apparent from the Annex.3 itself. It is also submitted that the statement of any of the petitioners party has not been placed on record. Not only this, but in the report of the

committee dated 26th Sept., 2001, statement of only Narayan Singh S/o Padam Singh have been incorporated whereas no statement of any other witnesses have been incorporated for the reasons best known to the committee. The Panchayat Samiti acted upon the sole piece of this evidence and passed the order. Since the committee's report dated 26th Sept., 2001 has been prepared at the back of the petitioners, therefore, this report cannot be used against the petitioners and further the report contains false facts that the evidence of both the parties were recorded. In view of the above, the entire proceedings taken by the Panchayat Samiti is void and deserves to be quashed and set aside.

Learned counsel for the petitioners also submitted that the learned Addl. Collector as well as the Board of Revenue did not consider the objection of the petitioner about the jurisdiction of the Gram Panchayat as well as of not giving any opportunity by the committee to the petitioners and the Addl. Collector and the Board of Revenue wrongly dismissed the appeal and the revision.

Learned counsel for the respondent submitted that, in fact,the mater was settled as back as in the year 1956 and it was decided to keep this way open. The respondents have placed on record, the copy of the settlement dated 26.10.56 as Annex.R/1. It is also submitted that the opportunity of hearing was given to the petitioners by the

committee.

I considered the submissions of learned counsel for the parties and perused the documents placed on record. It is clear from the Annex.3 itself that in this report it is mentioned that the statements of both the parties were recorded and on first page itself the names of all the witnesses have been mentioned. In the entire report, there is no mention of statement of the petitioners party. There appears to be no explanation for incorporating the statement of Narayan Singh S/o Padam Singh in the report of the committee.

In view of the above, the facts mentioned in the report of the committee appears to be not correct so far as it relates to recording of the statement of both the parties. This aspect has not been considered by the two courts below, is apparent from a bare reading of the orders.

In view of the above the writ petition of the petitioners deserves to be allowed, hence allowed and the order passed by the Gram Panchayat dated 4th Oct., 2001 vide resolution no.4, the order of the appellate authority dated 12th Dec., 2001 and order of the Board of Revenue dated 22nd July, 2003 are set aside and quashed. The matter is remanded back to the Gram Panchayat for deciding the matter afresh. Since the matter is relating to the right of way and much time has

passed, therefore, the position, which is continuing today shall be maintained by both the parties and shall not be disturbed till the proceedings are completed by the Gram Panchayat in accordance with law after giving opportunity of hearing to the parties.

(**Prakash Tatia), J.**

c.p.goyal/-